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No. 153

In the Supreme Court of the United States

OCTOBER TERM, 1961

LEWIS S. TRAVIS AND JEAN S. TRAVIS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
ROGER P. MARQUIS,
Attorney,
Department of Justice,
Washington 25, D.C.

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In execution of plans for the construction of the Dulles International Airport near Washington, D.C., proceedings were filed in the appropriate federal district court to condemn, among other lands, two parcels owned by petitioners. An order of possession was entered in January 1958, when the complaint was filed, but was vacated in July by an order providing for possession if and when a declaration of taking* was filed. A declaration of taking was filed in September 1958, together with a deposit of $75,000 as estimated compensation. Petitioners withdrew the estimated compensation in October 1958. On April 26, 1960, the commissioners appointed by the district

*See Declaration of Taking Act of February 26, 1931, 46 Stat. 1421, 40 U.S.C. 258a.

court filed their report determining that the value of the property was $79,250. No final judgment has yet been entered, however, and the district court proceedings are still pending.

In September 1959, a year after the declaration of taking, Congress passed a special act authorizing the Federal Aviation Agency to provide for the preservation of certain historic buildings on the property by conveying them, with necessary easements, to an appropriate state or private organization. P.L. 86–220, 73 Stat. 451 (Pet. 5a–6a). Pursuant to that Act, the Fairfax County Park Authority was given authority to take possession of the buildings, and it did so on February 1, 1960.

The present suit was brought in the Court of Claims to recover just compensation for the property measured by its value on February 1, 1960—allegedly much higher, because of an intervening change in the local zoning ordinances, than its value in September 1958, the date of the declaration of taking. The theory of the action was that the declaration of taking was ineffective and the taking did not occur until the entry by the Park Authority in 1960. The Court of Claims dismissed the petition on the ground that the federal district court, where the condemnation proceedings were pending, was the proper forum to adjudicate the validity and date of the taking.

Petitioner's challenges to the authority to condemn their property and to the effectiveness of the declaration of taking—though without merit in any event—are beside the point here, for the sole ground for the decision below was that those are matters to be

determined in the pending condemnation action. The district court's rulings on those issues in the condemnation proceeding, if properly presented and preserved, can be fully reviewed by an appeal in that action, and the Court of Claims was clearly correct in declining to review them here. The petition for certiorari should be denied.

Respectfully submitted.

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Solicitor General.
ROGER P. MARQUIS,
Attorney.

JULY 1961.

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